

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1001 be amended to read as follows:

1 Page 134, between lines 46 and 47, begin a new paragraph and
2 insert:

3 "SECTION 67. IC 6-2.5-2.5 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JANUARY 1, 2010]:

6 **Chapter 2.5. Reduced Sales and Use Tax Rate**

7 **Sec. 1. (a) This chapter does not apply during:**

8 (1) any reporting period in which IC 6-1.1-20.6-7.5 is in effect
9 and has not been invalidated by a court of law in a binding,
10 final unappealable determination; or

11 (2) any reporting period that begins after the Constitution of
12 the State of Indiana is amended to include language that
13 specifically authorizes the general assembly to limit the
14 property tax liability of a taxpayer to a percentage of the
15 assessed value of the taxpayer's property.

16 **(b) The following sections do not apply if this chapter applies:**

17 IC 6-2.5-2-2

18 IC 6-2.5-6-7

19 IC 6-2.5-6-8

20 IC 6-2.5-6-10

21 IC 6-2.5-7-3

22 IC 6-2.5-7-5

23 IC 6-2.5-10-1.

24 **Sec. 2. (a) The state gross retail tax is measured by the gross**
25 **retail income received by a retail merchant in a retail unitary**
26 **transaction and is imposed at the following rates:**

27 STATE	GROSS RETAIL INCOME
28 GROSS	FROM THE
29 RETAIL	RETAIL UNITARY
30 TAX	TRANSACTION
31 \$ 0	less than \$0.09

1	\$ 0.01	at least \$ 0.09	but less than	\$0.25
2	\$ 0.02	at least \$ 0.25	but less than	\$0.42
3	\$ 0.03	at least \$ 0.42	but less than	\$0.59
4	\$ 0.04	at least \$ 0.59	but less than	\$0.75
5	\$ 0.05	at least \$ 0.75	but less than	\$0.92
6	\$ 0.06	at least \$ 0.92	but less than	\$1.09

7 On a retail unitary transaction in which the gross retail income
8 received by the retail merchant is one dollar and nine cents (\$1.09)
9 or more, the state gross retail tax is six percent (6%) of that gross
10 retail income.

11 (b) If the tax computed under subsection (a) results in a fraction
12 of one-half cent (\$0.005) or more, the amount of the tax shall be
13 rounded to the next additional cent.

14 Sec. 3. Except as otherwise provided in IC 6-2.5-6 or IC 6-2.5-7,
15 a retail merchant shall pay to the department, for a particular
16 reporting period, an amount equal to the product of:

- 17 (1) six percent (6%); multiplied by
18 (2) the retail merchant's total gross retail income from taxable
19 transactions made during the reporting period.

20 The amount determined under this section is the retail merchant's
21 state gross retail and use tax liability regardless of the amount of
22 tax the retail merchant actually collects.

23 Sec. 4. (a) For purposes of determining the amount of state gross
24 retail and use taxes that a retail merchant must remit under section
25 3 of this chapter, the retail merchant may exclude from the retail
26 merchant's gross retail income from retail transactions made
27 during a particular reporting period an amount equal to the
28 product of:

- 29 (1) the amount of that gross retail income; multiplied by
30 (2) the retail merchant's income exclusion ratio for the tax
31 year which contains the reporting period.

32 (b) A retail merchant's income exclusion ratio for a particular
33 tax year equals a fraction, the numerator of which is the retail
34 merchant's estimated total gross retail income for the tax year
35 from unitary retail transactions that produce gross retail income
36 of less than nine cents (\$0.09) each, and the denominator of which
37 is the retail merchant's estimated total gross retail income for the
38 tax year from all retail transactions.

39 (c) To minimize a retail merchant's record keeping
40 requirements, the department shall prescribe a procedure for
41 determining the retail merchant's income exclusion ratio for a tax
42 year, based on a period, not to exceed fifteen (15) consecutive days,
43 during the first quarter of the retail merchant's tax year. However,
44 the period may be changed if the change is requested by the retail
45 merchant because of the retail merchant's peculiar accounting
46 procedures or marketing factors. In addition, if a retail merchant
47 has multiple sales locations or diverse types of sales, the
48 department shall permit the retail merchant to determine the ratio

on the basis of a representative sampling of the locations and types of sales.

Sec. 5. (a) To compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals a percentage of the retail merchant's state gross retail and use tax liability accrued during a calendar year, specified as follows:

(1) Eighty-three hundredths percent (0.83%) if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).

(2) Six-tenths percent (0.6%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:

(A) was greater than sixty thousand dollars (\$60,000); and

(B) did not exceed six hundred thousand dollars (\$600,000).

(3) Three-tenths percent (0.3%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than six hundred thousand dollars (\$600,000).

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section.

Sec. 6. (a) With respect to the sale of gasoline that is dispensed from a metered pump, a retail merchant shall collect, for each unit of gasoline sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

The retail merchant shall collect the state gross retail tax prescribed in this section even if the transaction is exempt from taxation under IC 6-2.5-5.

(b) With respect to the sale of special fuel or kerosene that is dispensed from a metered pump, unless the purchaser provides an exemption certificate in accordance with IC 6-2.5-8-8, a retail merchant shall collect, for each unit of special fuel or kerosene sold, state gross retail tax in an amount equal to the product, rounded to the nearest one-tenth of one cent (\$0.001), of:

(1) the price per unit before the addition of state and federal taxes; multiplied by

(2) six percent (6%).

1 Unless the exemption certificate is provided, the retail merchant
 2 shall collect the state gross retail tax prescribed in this section even
 3 if the transaction is exempt from taxation under IC 6-2.5-5.

4 Sec. 7. (a) Each retail merchant who dispenses gasoline or
 5 special fuel from a metered pump shall, in the manner prescribed
 6 in IC 6-2.5-6, report to the department the following information:

7 (1) The total number of gallons of gasoline sold from a
 8 metered pump during the period covered by the report.

9 (2) The total amount of money received from the sale of
 10 gasoline described in subdivision (1) during the period
 11 covered by the report.

12 (3) The part of the amount described in subdivision (2) that
 13 represents state and federal taxes imposed under this article,
 14 IC 6-6-1.1, or Section 4081 of the Internal Revenue Code.

15 (4) The total number of gallons of special fuel sold from a
 16 metered pump during the period covered by the report.

17 (5) The total amount of money received from the sale of
 18 special fuel during the period covered by the report.

19 (6) The part of the amount described in subdivision (5) that
 20 represents state and federal taxes imposed under this article,
 21 IC 6-6-2.5, or Section 4041 of the Internal Revenue Code.

22 (7) The total number of gallons of E85 sold from a metered
 23 pump during the period covered by the report.

24 (b) Concurrently with filing the report, the retail merchant shall
 25 remit the state gross retail tax in an amount that equals five and
 26 sixty-six hundredths percent (5.66%) of the gross receipts,
 27 including state gross retail taxes but excluding Indiana and federal
 28 gasoline and special fuel taxes, received by the retail merchant
 29 from the sale of the gasoline and special fuel that is covered by the
 30 report and on which the retail merchant was required to collect
 31 state gross retail tax. The retail merchant shall remit that amount
 32 regardless of the amount of state gross retail tax that the merchant
 33 has actually collected under this chapter. However, the retail
 34 merchant is entitled to deduct and retain the amounts prescribed
 35 in subsection (c), section 5 of this chapter, and IC 6-2.5-6-11.

36 (c) A retail merchant is entitled to deduct from the amount of
 37 state gross retail tax required to be remitted under subsection (b)
 38 the amount determined under STEP THREE of the following
 39 formula:

40 STEP ONE: Determine:

41 (A) the sum of the prepayment amounts made during the
 42 period covered by the retail merchant's report; minus

43 (B) the sum of prepayment amounts collected by the retail
 44 merchant, in the merchant's capacity as a qualified
 45 distributor, during the period covered by the retail
 46 merchant's report.

47 STEP TWO: Subject to subsection (d), for reporting periods
 48 ending before July 1, 2020, determine the product of:

(A) eighteen cents (\$0.18); multiplied by
 (B) the number of gallons of E85 sold at retail by the retail
 merchant during the period covered by the retail
 merchant's report.

STEP THREE: Add the amounts determined under STEPS
ONE and TWO.

For purposes of this section, a prepayment of the gross retail tax is
 presumed to occur on the date on which it is invoiced.

(d) The total amount of deductions allowed under subsection (c)
 STEP TWO may not exceed one million dollars (\$1,000,000) for all
 retail merchants in all reporting periods. A retail merchant is not
 required to apply for an allocation of deductions under subsection
 (c) STEP TWO. If the department determines that the sum of:

- (1) the deductions that would otherwise be reported under
 subsection (c) STEP TWO for a reporting period; plus
- (2) the total amount of deductions granted under subsection
 (c) STEP TWO in all preceding reporting periods;

will exceed one million dollars (\$1,000,000), the department shall
 publish in the Indiana Register a notice that the deduction
 program under subsection (c) STEP TWO is terminated after the
 date specified in the notice and that no additional deductions will
 be granted for retail transactions occurring after the date specified
 in the notice.

Sec. 8. (a) The department shall account for all state gross retail
 and use taxes that it collects.

(b) The department shall deposit those collections in the
 following manner:

- (1) Ninety-nine and sixty-seven thousandths percent
 (99.067%) of the collections shall be paid into the state
 general fund.
- (2) Seventy-six hundredths of one percent (0.76%) of the
 collections shall be paid into the public mass transportation
 fund established by IC 8-23-3-8.
- (3) Thirty-three thousandths of one percent (0.033%) of the
 collections shall be deposited into the industrial rail service
 fund established by IC 8-3-1.7-2.
- (4) Fourteen-hundredths of one percent (0.14%) of the
 collections shall be deposited into the commuter rail service
 fund established by IC 8-3-1.5-20.5.

Sec. 9. (a) As used in this section, "applicable reporting period"
 means a reporting period to which this chapter applies.

(b) For purposes of this chapter, all transactions, except the
 furnishing of public utility, telephone, or cable television services
 and commodities by retail merchants described in IC 6-2.5-4-5,
 IC 6-2.5-4-6, and IC 6-2.5-4-11 shall be considered as having
 occurred in an applicable reporting period to the extent that
 delivery of the property or services constituting selling at retail is
 made to the purchaser or to the place of delivery designated by the

1 purchaser on a date in the applicable reporting period. However,
2 a transaction shall be considered as having occurred on a date that
3 is not in an applicable reporting period to the extent that the
4 agreement of the parties to the transaction is entered into on a date
5 that does not occur in an applicable reporting period and payment
6 for the property or services furnished in the transaction is made on
7 a date that does not occur in an applicable reporting period,
8 notwithstanding the delivery of the property or services during an
9 applicable reporting period.

10 (c) With respect to a transaction constituting the furnishing of
11 public utility, telephone, or cable television services and
12 commodities, only transactions for which the charges are collected
13 on original statements and billings dated on a date in an applicable
14 reporting period shall be considered as having occurred in the
15 applicable reporting period."

16 Renumber all SECTIONS consecutively.

(Reference is to EHB 1001 as printed April 10, 2009.)

Senator DELPH